

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	2:08-cr-00283-RCJ-PAL-3
vs.)	2:08-cr-00283-RCJ-PAL-5
)	
MARKETTE TILLMAN et al.,)	ORDER
)	
Defendants.)	
)	

Three motions are pending before the Court. First, the United States asks the Court to order Tillman and Taylor to submit to physical examinations, i.e., to permit the FBI to photograph tattoos that may indicate their membership in the Playboy Bloods. The United States notes that the Court previously denied a motion to exclude such evidence. The United States notes that it could simply ask Defendants to display the tattoos to the jury at trial but that

1 presenting the evidence via photographs will be less disruptive and intrusive. Defendants have
2 not responded. The forced display of tattoos does not constitute compelled testimony under the
3 Fifth Amendment. *See, e.g., United States v. Bay*, 762 F.2d 1314, 1315 (9th Cir. 1985). The
4 Court grants the motion.

5 Second, the United States has asked the Court for an order directing the FBI to examine a
6 telephone purportedly belonging to Tillman. Tillman has previously requested that the phone be
7 examined and filed a motion for the United States to turn the phone over to him for testing. The
8 Court noted that the United States should be permitted to test the phone before turning it over to
9 the defense. Tillman objected that the United States' testing methods could damage the phone or
10 the evidence on it. The United States explained to the defense the testing methods it intended to
11 employ but refused to permit a defense expert to be present during its tests as requested. The
12 United States has attached a proposed order for the Court to sign. (*See Proposed Order*, ECF No.
13 800, at 4). The Court grants the motion. Defendant will receive the test results and the phone
14 itself after the United States' tests. Defendant retains the right to cross-examine the forensic
15 examiner and argue the accuracy of the tests to the jury.

16 Third, the United States asks the Court to rule that certain testimony will be admissible at
17 trial. Defendant has not responded. The Court grants the motion, noting that in limine rulings
18 are provisional and that circumstances could arise at trial making admission of the testimony
19 improper. The proffered testimony is the previous testimony of an unavailable witness. Tillman
20 has been tried in state court for the murder of security guard Brian Wilcox in the Eighth Judicial
21 District Court, Case No. C199660. Wilcox's fellow security guard Jordan Boyd testified against
22 Tillman at that trial, and Tillman cross-examined him. Boyd died in a motorcycle accident in
23 2006. The prior testimony of an unavailable witness is admissible as a hearsay exception if the
24 party against whom the testimony is offered had an opportunity and similar motive to develop the
25 testimony by cross-examination when the testimony was given. Fed. R. Evid. 804(b)(1). Boyd is

1 unavailable, and Tillman had an opportunity and similar motive to cross-examine Boyd at his
2 previous trial. And because the Rule itself incorporates an opportunity-to-cross-examine
3 requirement, the Sixth Amendment is no additional barrier to admission under the *Crawford* line
4 of cases.

5 **CONCLUSION**

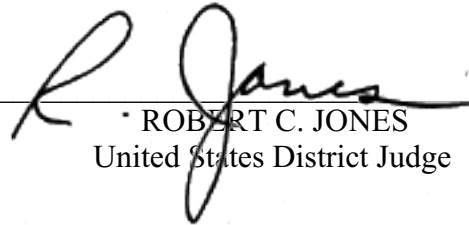
6 IT IS HEREBY ORDERED that the Motion for Non-testimonial Evidence (ECF No. 798)
7 is GRANTED.

8 IT IS FURTHER ORDERED that the Motion to Order Examination (ECF No. 800) is
9 GRANTED.

10 IT IS FURTHER ORDERED that the Motion in Limine (ECF No. 805) is GRANTED.

11 IT IS SO ORDERED.

12 DATED: This 25th day of March, 2013.

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14 
15 ROBERT C. JONES
16 United States District Judge
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